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TAGS: [PREL](#) [PGOV](#) [PBTS](#) [PHUM](#) [ENRG](#) [KIRF](#) [AJ](#)
SUBJECT: AZERBAIJAN'S 2008 ELECTION: LIMITED JUDICIARY
INDEPENDENCE

REF: A. BAKU 00836
[1](#)B. BAKU 00850
[1](#)C. 07 BAKU 01252

Classified By: Ambassador Anne E. Derse for reasons 1.4 (b) and (d).

[1](#)1. (C) Summary: Local legal experts state the Azerbaijani judiciary has little independence in cases touching on the GOAJ or Azerbaijani elites' financial and political interests. In a political culture that favors personal relations and closed-door meetings over transparent processes and uniform standards, Azerbaijan's progress toward creating a professional, independent judiciary can be short-circuited through unseen interventions by GOAJ insiders. Still, Azerbaijan has made real progress in reforming the selection process for new judges and creating a cadre of more professional, merit-based judges. Unfortunately, alongside a more merit-based selection process, judges are still unofficially vetted for their loyalty to the government, according to local contacts. The Presidential Administration also maintains an open-hand in unofficially "guiding" some verdicts. At lower-levels, verdicts also can sometimes be purchased through a bribe. The Embassy does not expect the judiciary to play a significant election-related role, although it is unlikely to be an objective party to any potential case that would run counter to incumbent President Aliyev's interests. End Summary.

[1](#)2. (C) This cable is part of a broader series covering the political environment before the October 15 Presidential election. Ref A argued that Islam will have a minimal role in the election, while ref B dealt with the GOAJ's freedom of assembly law and the potential for large-scale rallies. Septel will address the media freedom environment. The Embassy met with several legal experts to hear their perspectives on the Azerbaijani judiciary's level of independence and the possible role the judiciary could play in the election.

Judiciary Reinforces Elite-level Interests

[1](#)3. (C) The consensus view among our human rights and legal contacts is that in judicial matters touching on the GOAJ or Azerbaijani elites' financial and political interests, the Azerbaijani judiciary has little or no genuine independence. Our contacts argued that the judiciary is best understood as a tool to reinforce and protect the interests of the elite. When touching upon cases with a political angle, local human

rights activist Murat Saddadinov, voicing similar concerns of many observers, said the judiciary is best seen as part of a broader authoritarian system, rather than an independent avenue for redressing citizen's concerns. He was not optimistic that election-related complaints, should they materialize, would be given a fair hearing in Azerbaijan.

Selection of Judges Favors Loyalty to GOAJ

¶4. (C) Our contacts focused on the selection process for judges as a key indicator of the judiciary's lack of independence. Two local lawyers, Elchin Sadikov and Geysar Gurbanov, explained the selection process, observing that while it looks good on paper, the process serves as an unofficial mechanism for vetting judges' loyalty to the GOAJ and collecting bribes from judicial candidates. Individuals seeking to become a judge must pass a written and oral exam, followed by a training course, concluding with an interview before a committee of the Judicial Legal Council -- a body that includes representatives from the Prosecutor General, Ministry of Justice, and other lawyers. Sadikov, Gurbanov, and Saddadinov said the key determinant for passing this interview is loyalty to the GOAJ. According to Gurbanov, the formula for passing the interview includes a mixture of bribe money, good relations with the Aliyev family, loyalty to the GOAJ, and professional skills. Selection for higher-level judgeships requires both a higher "entrance fee" and better links to the Aliyev family. Another tool the GOAJ can use to ensure the loyalty of judges is through the collegium. Lawyers need to be registered through the collegium in order to fully represent clients in a courtroom.

¶5. (C) While loyalty to the GOAJ remains a key determinant in the selection of new judges, Azerbaijan has made genuine progress in moving toward a system that has the potential to create a new cadre of professional, merit-based judges (ref C). In 2007, fifty-five new judges were appointed after passing a reformed judicial exam process, and this year 102 judges were likewise appointed. Nonetheless, it is still alleged that the process is vulnerable to bribery and the unofficial vetting of a judge's loyalty to the GOAJ. Also in 2007, thirty sitting judges were dismissed for professional shortcomings, allegedly including corruption and incompetence. This was an unprecedented event, but the Embassy has yet to confirm that these judges genuinely were removed because of professional shortcomings, or rather, due to failure to pay bribes, window-dressing for the international community, or some mixture of all three.

¶6. (C) Local contacts pointed to the judiciary's unwillingness to issue rulings against the government as an indicator of the judiciary's lack of autonomy from political interests. Saddadinov noted that the apex of judicial independence was in the 1993-1994 timeframe, when a court ruled in favor of former Defense Minister Shahin Musayev, going against the wishes of then President Heydar Aliyev. Our contacts argued that in the present climate, it would be inconceivable for a judge to rule against the interests of the ruling elite in a sensitive case. Gurbanov made the point that the legal system permits horizontal, but not vertical justice. In other words, Azerbaijani citizens have the ability to bring criminal and civil suits against other citizens -- although a citizen often can purchase the outcome with a bribe -- but it is almost entirely impossible for an ordinary citizen to bring a case against a member of the elite and receive a fair verdict.

GOAJ Provides "Directives" for Some Cases

¶7. (C) Throughout the former Soviet Union, including in Azerbaijan, there are a variety of mechanisms for securing a desired verdict from a judge. When a court case touches on the GOAJ's interests, the Presidential Administration will provide unofficial guidance on the outcome, according to our contacts. The level at which the Presidential Administration

intervenes depends on the sensitivity of a particular case. Typically, Presidential Administration Chief of Staff Ramiz Mehdiyev or one of his staff -- especially Fuad Aleskerov -- will meet with Minister of Justice Fikret Mammadov to directly or indirectly task the judge to issue a particular verdict. When asked to supply evidence for this assertion, our contacts reported that it was based on their experience in a number of court cases over the years and that it is nearly impossible to provide direct evidence of such meddling by the Presidential Administration because these are unofficial mechanisms. Their information came from conversations with judges and lawyers.

Corruption Shapes Some other Cases

¶18. (C) In cases where the Presidential Administration does not intervene, private citizens can often successfully pay the judge for a particular outcome. In these instances, the "payee" often uses several intermediaries to get money to the judge. Gurbanov told us "payees" increasingly have to use more complex cutout schemes as corruption investigations can easily be launched against suspected "payees."

Judiciary Unlikely to Play Role in Election

¶19. (C) Our contacts do not believe the judiciary will play a significant role in the run-up to the election or immediately afterward. The level of interest in the election among the general public and even among some politically-active members of civil society is low. Our interlocutors highlighted that there is a limited function the judiciary could play in connection with the election, as the Central Elections Commission (CEC) is the primary player and while the Constitutional Court certifies the CEC's results, there is

the widely-held expectation that President Aliyev will easily win the election.

¶10. (C) One exception to the judiciary's limited role vis-a-vis the election is former presidential candidate Eldar Namazov's plans to sue the government regarding the timing of the election, although he does not believe the case will go very far. Namazov claims the present election campaign is illegitimate from a technical perspective because President Aliyev did not sign the new amendments to the Election Code until after the campaign should have started under the prior Election Code.

Recommendations for Improving the Judiciary

¶11. (C) Our interlocutors were downbeat about the net impact of Western assistance to improve the judiciary. Our contacts argued that the unofficial mechanisms for influencing the judiciary can easily circumvent the best Western programs. Contacts highlighted two points of leverage with the GOAJ, however. First, coordinated, consistent criticism by western states in instances of blatant judicial meddling sometimes works. Some members of the GOAJ -- most importantly, President Aliyev -- want to be viewed as modern statesmen by Western officials and the broader Azerbaijani public and the judiciary's lack of independence often does not square with this image. Second, Azerbaijani citizen's ability to appeal to the European Court of Human Rights (ECHR) is a mechanism that can sometimes trump a potentially unfair ruling in the Azerbaijani judiciary. Our contacts recommended developing programming that trains lawyers and the general public on how to work with and appeal to the ECHR. This training is being provided through U.S. Department of Justice programs in Azerbaijan.

¶12. (C) Comment: As Transparency International recently reported, Azerbaijan is perceived to have a serious problem with corruption. This perception remains steadfast, despite widespread economic reforms and growth at breakneck speed that are taking place. Judicial reform would strike at the

heart of Azerbaijan's image problem, allowing individuals and organizations to voice concerns and get a fair hearing. Likewise, Azerbaijan's record on human rights would benefit greatly from judicial reform, as journalists and others who register complaints would have recourse. The Council of Europe, the EU, and the OSCE agree with our assessment that judicial reform, and the development of a truly independent judicial system, is key to Azerbaijan's democratic development and deserve a focused effort by international donors. The USG, through the DRL-led democracy dialogue and our assistance programs, should make judicial reform a focus of our democracy and governance efforts over the coming year.

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